

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 18, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP24**

**Cir. Ct. No. 2011CV136**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**THOMAS W. WHALEN, HOLLY A. WHALEN, JACOB T. WHALEN AND  
KEATON K. WHALEN,**

**PLAINTIFFS-APPELLANTS,**

**v.**

**STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY AND  
ASPIRUS, INC.,**

**DEFENDANTS-RESPONDENTS,**

**DARRYL FRICK,**

**DEFENDANT.**

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APPEAL from a judgment of the circuit court for Lincoln County:  
JOHN M. YACKEL, Judge. *Reversed and cause remanded for further  
proceedings.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Thomas Whalen, Holly Whalen, Jacob Whalen, and Keaton Whalen (collectively “Whalen”) appeal a partial summary judgment in favor of State Farm Mutual Automobile Insurance Company. The circuit court held that WIS. STAT. § 632.32(6)(d)<sup>1</sup> did not prohibit antistacking provisions in insurance policies. We conclude this case is controlled by our supreme court’s recent decision in *Belding v. Demoulin*, 2014 WI 8, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_. Accordingly, we reverse and remand for further proceedings.

¶2 On October 8, 2010, Thomas Whalen and his wife Holly were injured when the motorcycle they were riding was struck by an underinsured vehicle. The motorcycle was insured by a State Farm policy that provided underinsured motorist coverage. In addition to the motorcycle, State Farm also insured two automobiles, and those policies also contained UIM provisions. Each policy was in force at the time of the accident, and they contained identical “drive-other-car” exclusions that state coverage will not apply to a loss involving a motor vehicle owned by the insured but covered under another policy.

¶3 Whalen sought to invoke UIM coverage for all three vehicles. State Farm paid UIM benefits under the motorcycle policy, but denied coverage for UIM benefits under Whalen’s two automobile policies. Whalen commenced an action seeking to stack his UIM coverage, and State Farm moved for partial summary judgment. The circuit court granted partial summary judgment in favor of State Farm, and Whalen appeals.

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<sup>1</sup> References to the Wisconsin Statutes are to the 2009-10 version unless otherwise indicated.

¶4 We conclude *Belding* controls this case.<sup>2</sup> The accident in the present case arose during the two-year effective period of WIS. STAT. § 632.32(6)(d), which allowed the stacking of coverage limits for up to three vehicles owned by the insured. In *Belding*, our supreme court held that § 632.32(6)(d) rendered unenforceable a “drive-other-car” exclusion that would otherwise be permissible under WIS. STAT. § 632.32(5)(j). See *Belding*, 2014 WI 8, ¶¶2-4.

¶5 Therefore, State Farm’s “drive-other-car” exclusion was unenforceable to prevent stacking of UIM coverage during the short-lived law in effect at the time of the accident in the present case.

*By the Court.*—Judgment reversed and cause remanded for further proceedings.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

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<sup>2</sup> State Farm acknowledges the “drive-other-car” exclusion in the present case is identical to the exclusion addressed in *Belding*, with the exception that *Belding* involved an uninsured motorist exclusion while the present case involves an underinsured motorist exclusion. State Farm concedes this is a distinction without a difference, as the statutes involved are exactly the same, and *Belding* applies whether we are addressing UM or UIM coverage. *Belding v. Demoulin*, 2014 WI 8, \_\_\_ Wis. 2d \_\_\_, \_\_\_ N.W.2d \_\_\_.



